

Opinion
No. 1231

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Tax Division

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DISTRICT OF COLUMBIA
TAX DIVISION

DEC 21 1984

GEORGE WASHINGTON UNIVERSITY, :
: Petitioner, :
v :
DISTRICT OF COLUMBIA, :
: Respondent. :

FILED

Tax Docket No. 3335-84

OPINION AND ORDER

This matter came before the Court on November 1, 1984, on cross-motions for summary judgment. The parties submitted proposed findings and conclusions on December 6, 1984.

The petition in this case challenges a real estate tax assessed for the period from July 1, 1983, through June 30, 1984, upon certain real property located in the District of Columbia known as Lot 835 in Square 80. Petitioner seeks an exemption pursuant to D.C. Code (1981) Section 47-1002(18)(A)(i) exempting grounds required and actually used for carrying on activities and purposes of educational institutions. The District of Columbia contends that an exemption is unwarranted.

The tax in controversy is the real property tax for the first half of fiscal year 1984 in the amount of \$1,823.90.

This Court has jurisdiction to hear this appeal pursuant to D.C. Code (1981) Sections 11-1201 and 47-1009.

I. FACTS

Petitioner, the George Washington University is a non-profit institution of higher learning organized and incorporated in the District of Columbia, with its principal office at 2121 I Street, N.W. It holds tax exempt status for purposes of District of Columbia income, inheritance, and personal property taxes and for purposes of federal income tax under Internal Revenue Code Section 501(c)(3). In addition, petitioner is an institution entitled to real property

tax exemption as a school, college, or university pursuant to D.C. Code (1981) Section 47-1002(10).

The tax in controversy is a real estate tax assessed for the period from July 1, 1983, through June 30, 1984, upon certain real property located in the District of Columbia known as Lot 835 in Square 80. The subject property is situated in the 2100 block of F Street, N.W., Washington, D.C., and is within the campus boundaries of the University. Petitioner acquired the property on March 16, 1973. During calendar year 1983, and up to the present time, the property, which is void of any buildings or structures, has been used as a nursery and storage area for landscaping materials.

On or about June 28, 1983, petitioner applied to the Department of Finance and Revenue for tax exempt status for the subject property. The Department of Finance and Revenue subsequently denied the application on May 3, 1984.

Petitioner received a statement of taxes due on August 15, 1983, and filed the instant petition on February 10, 1984. Pursuant to D.C. Code (1981) Section 47-1009, payment of the subject tax is not prerequisite to the filing of the instant petition; however, the tax for the first half of fiscal year 1984 was paid by petitioner in the amount of \$1,823.90.

II. ANALYSIS

Petitioner's primary contention is that the subject property consists of grounds reasonably required and actually used for the carrying on of its educational activities and is therefore entitled to an exemption under D.C. Code (1981) Section 47-1002(10)(A)(1). The District contends that the subject property was neither in useable condition nor actively being rehabilitated by petitioner for university use and

therefore is not exempt from real property taxes pursuant to the relevant exempt provisions. Thus, the issue before the Court is whether the subject property owned by the petitioner is exempt under the provisions of D.C. Code (1981) Section 47-1002 et seq.

Pursuant to D.C. Code (1981) Section 47-1002(10), buildings belonging to and operated by schools, colleges, or universities which are not organized or operated for private gain and which embrace the relationship of teacher and student are exempt from real property taxes.

It is undisputed that petitioner is an institution entitled to exemption in accordance with the above-cited provisions. Petitioner is therefore eligible to be considered for an exemption of the subject grounds, pursuant to the following provision:

Grounds belonging to and reasonably required and actually used for the carrying on of the activities and purposes of any institution or organization entitled to exemption under the provisions of Sections 47-1002, 47-1005 and 47-1007 to 47-1010.

D.C. Code (1981) Section 47-1002(10)(A)(i).

The subject property is void of any buildings or structures and during the tax year in question was being used by petitioner's for storage purposes. In District of Columbia v. Catholic University, 397 A.2d 915 (1979), the District of Columbia Court of Appeals considered whether buildings owned by the university were entitled to tax-exemption despite non-occupation and non-use during the entire tax year in question. Recognizing the absence of precedent at that time, the Court found the following reasoning of the trial Court to be persuasive:

The crux is not the incidental use or non-use of the property but what is its primary use.

397 A.2d 922.

The Court of Appeals' acceptance of the trial court's construction indicates that the purpose for which a university elects to use its property is to be viewed from a standpoint which is broader than that asserted by respondent.

Here, the subject property was being used to accommodate the storage needs of petitioner. Respondent would have this Court to reason that because the subject property is vacant land, an exemption is not warranted. It is this Court's view, however, that while the particular use of the subject property may be incidental, it is nevertheless a legitimate use within the meaning of the exemption provision.

Further, respondent contends that the exemption should be denied in light of District of Columbia v. George Washington University, 262 F.2d 36 (D.C. 1958), which sustained exemptions for buildings based on rehabilitation efforts undertaken by the university to adapt the buildings for university use. To the extent that District of Columbia v. George Washington University is applicable to the facts of the instant petition, the claimed exemption is supported by the fact that the property was cleared of structures in order to be used for campus open space.

Moreover, the flexibility which a university like petitioner requires in its operation was recognized in District of Columbia v. Catholic University, supra. In quoting the trial court's reasoning, the decision stated:

a school the size of Catholic University must have some flexibility in its operation and its exempt status should not be disturbed merely because it elects for a given period not to use a given classroom or portion of a dormitory or other building.

Id at 922.

The need for flexibility in university operations is particularly strong in the instant case because of the ex-

tended boundaries in which petitioner carries out its educational mission. Petitioner's campus is traversed with public streets rather than private roadways. It therefore requires as much flexibility as do those universities with more traditional campuses.

III. CONCLUSION AND ORDER

The Court concludes that the subject property constitutes grounds reasonably required and actually used for the carrying on of the activities of petitioner and is accordingly exempt from real property taxes. Based upon the foregoing findings of facts and conclusions, this Court has determined that petitioner's Motion for Summary Judgment should be granted and that defendant's Cross-Motion should be denied.

Wherefore, it is this 21 day of December, 1964,

ORDERED that the Motion of Petitioner George Washington University for Summary Judgment shall be, and hereby is granted, and it is

FURTHER ORDERED AND DECLARED that the subject property, Lot 835 in Square 60, is exempt from all real property taxation for fiscal year 1964; and it is

FURTHER ORDERED that the respondent District of Columbia shall refund to petitioner real property taxes paid on Lot 835 in Square 60 for the tax year 1964 in the amount of \$1,823.90, together with statutory interest pursuant to D.C. Code (1961) Section 47-3310(c) at the rate of six percent per annum, from February 10, 1964, to the date of the making of the refund.


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